

TUTORIAL 2 - THE CONSTITUTION

How does the US Constitution protect against the abuse of power by those in authority?

How does the US Constitution protect the individual citizen against the abuse of power by those in authority?

Highlight (and be prepared to discuss) any area of the document which you feel represents an improvement on the unwritten system which we have in the UK.

In order to answer this question it is first necessary to establish what a Constitution is? There is no clear indication or meaning as to what a constitution is however it can be defined as being "a body of rules which regulates the system of government within a state. It establishes the bodies and institutions which form part of that system, it provides for the powers which they are to exercise, it determines how they are to interact and co-exist with one another and ... it is concerned with the relationship between the government and the individual"¹. In this way the Constitution can be said to have a horizontal relationship (between the various institutions of state) and a vertical relationship (between the state and the individual).

A Constitution can either be concrete, written down in a document or abstract (set of rules), unwritten. The concrete form of a constitution is adopted by the majority of states including the US. In the US the written constitution came about after a major political change of securing independence. Its constitution is contained in a single document called the 'Constitution'. The UK is different compared to every other country in the world as it does not have a written constitution. The Constitution of the UK is abstract as it cannot be found written down in a single document. It is made up of unwritten rules. It is not codified as the US.

Document with special legal sanctity. Higher legal status

The exact contents of a constitution will differ from state to state.

Democratic constitutions should follow the principles of constitutionalism.

Question 1 - Government ministers are both collectively and individually responsible to Parliament for their actions. This accountability is not legal but political.

Control of executive power via judicial review, tribunals, inquiries and Parliamentary ombudsman's.

Question 2- Parliamentary elections

¹ Parpworth

separation of power control thru courts

Chris Taylors book

A constitution simply means a system of rules. The Constitution of a country sets out how power is held by the state and how that power relates to the citizen.

DEFINITION - The framework of rules which dictate the way in which power is divided between the various institutions of state and the relationship between the state and the individual (the relationship between the institutions of state along with the relationship between the state and the individual).

CLASSIFICATION

Written - Unwritten

We in the UK have a (constitutional monarchy).

The most important way to classify constitutions is between written and unwritten.

Almost every country apart from the UK has a written constitution which contains the main rules governing the power of the state and the relationship between the state and the individual in a single document. For the citizens of the US the constitution is an enormously important document because it prevents the state from abusing its powers and safeguards the rights of the individual.

Art1 - establishes the first branch of govt - the legislature

Art 2 - the executive

3 - the judiciary

4 - provides that all states must honour the laws of all other states.

5- outlines the procedure for amending the constitution.

CHANGING THE WRITTEN CONSTITUTION

In order to protect the citizen against the state, the const has to be strong (otherwise the gov will simply change it) but if it is too strong then it cannot be amended to reflect changes in society. Eg. US const included the right to own slaves which was later removed when the maj recognised this as unacceptable.

Maj of written const are produced after a revolution written after war of independence from Britain. Although maj countries have a written const New Zealand and Israel don't have one.

UNWRITTEN CONSTITUTION

By contrast, the UK with an unwritten const has no single document which sets out power relationships between the state. Instead we have many sources both written and unwritten which combine to provide the rules regulating the state. (One of the most significant aspects of the unwritten const of the UK is that there is no clear statement of where power lies within the state. Much power is apportioned in the UK by means of historical and often informal arrangements, customs and traditions.

These can be said to have worked for centuries in the UK but it is difficult to ensure accountability when there is uncertainty over precisely where power lies.

RIGHTS AND THE CONSTITUTION

One of the most important aspects of the written constitution is that it provides protection for individual rights. Eg us specifically lists a number of rights as amendments to the constitution first amendment right to freedom of speech. Such rights cannot be taken away by the state. Under an unwritten constitution the state can take away individual rights at any time because they are not protected by the constitution.

Although the unwritten const does not protect rights we now have the European convention on human rights as implemented by the Human Rights Act 1998 which does provide greater protection for certain rights.

CHARACTERISTICS OF WRITTEN AND UNWRITTEN CONSTITUTIONS

WRITTEN CONSTITUTIONS

ADVANTAGES - All key provisions are contained in a single document

DISADVANTAGE - Requires one document to encompass the regulation of the entire state.

A - Provides a clear statement of how the state should with no uncertainty over words. Everyone can read and agree what it says.

D - May lead to litigation over the precise meaning of the terms used particularly if the language is outdated.

A - Protects the individual from abuses by the government of the day

D - May be difficult to amend if the provisions become outdated (slavery)

A - Provides clear protection of individual rights

D - May be inflexible and unresponsive to change

UNWRITTEN CONSTITUTION

A - Flexible and responsive to changing circumstances

d - can appear vague and uncertain. No single agreed source of constitutional law.

a - Leaves the state free to develop the law for the benefit of citizens.

d - leaves the state free to abuse its powers and develop laws which act against its citizens.

A - Encourages the evolution of the constitution

D - Provides no protection for individual civil liberties.

Monarchical Constitution the head of state is either a king or queen and power is exercised in their name. In this way although the majority of power in the UK now resides with Parliament and Government the queen remains the head of state.

The US have a Republican Constitution where the head of state is the president who has far greater power than the current queen. Such power is justified on the basis that the president is elected and so accountable to the people unlike a monarch who is head of state simply by birth.

Federal power exercised in the name of the state

Monarchical power exercised in the name of queen

The US has a federal constitution. State power is divided into those exercised by central government and those exercised by the states or regions. Central Government (also known as the 'federal' government) retains the most important powers relating to matters such as defence, whereas the individual 'states' have power on a local level and have their own constitutional status.

By contrast, the UK has a 'Unitary' constitution where all power resides in the central state institutions. We do have local Government, in the form of local councils but these can be altered (or even abolished) by the central government at any time. A Constitution with power concentrated in central government. Local governments may exist but not with the same constitutional status of the states under a federal constitution. Example of the abolition of the Greater London Council in 1985 as an example of power remaining with central government under a unitary constitution. (the federal government of the US could not abolish one of the states in this way under the federal system). (could discuss if preferable to an elected president under a republican const or an unelected monarch as in UK.).

Our constitution appears to work reasonably well because we are a prosperous society with relative freedom.

The negligible protection for individual rights provided by the UK const. Because the state is not constrained by a written const it can change and remove our rights.

The UK const has worked well but if anything was to go wrong there is little protection for the individual to be found in the const.

